

STATE OF INDIANA) IN THE VIGO COUNTY Superior COURT
) SS:
COUNTY OF VIGO) CAUSE NO. 84D01 0608 PL 6455

STATE OF INDIANA,

Plaintiff,

v.

DOUGLAS E. BRUCKEN, individually and
doing business as, Great Wheels, Inc.,

Defendant.

FILED
VIGO COUNTY SUPERIOR COURT

AUG 22 2006

Patricia R. Messersmith
CLERK

**COMPLAINT FOR INJUNCTION,
RESTITUTION, COSTS, AND CIVIL PENALTIES**

The Plaintiff, State of Indiana, by Attorney General Steve Carter and Deputy Attorney General Mary Ann Wehmuller, petitions the Court pursuant to the Indiana Deceptive Consumer Sales Act, Indiana Code §24-5-0.5-1 *et seq.*, for injunctive relief, consumer restitution, investigative costs, civil penalties, and other relief.

PARTIES

1. The Plaintiff, State of Indiana, is authorized to bring this action and to seek injunctive and other statutory relief pursuant to Ind. Code §24-5-0.5-4(c).

2. The Defendant Douglas E. Brucken is an individual who at all relevant times alleged in this complaint had a principal place of business in Vigo County located 3968 S. U.S. 41, Terre Haute, Indiana, and engaged in the retail sale of used motor vehicles.

FACTS

3. On September 1, 2004, Claude W. Carter purchased a used 2001 GMC Jimmy from the Defendant for a total price of \$15,157.00. A copy of the Carter purchase order is attached hereto as Exhibit "A".

4. As part of the total price, Mr. Carter paid the Defendant \$1,600.00 for an AUL Consumer Protection Service Contract (extended warranty).

5. Defendant through his salesman, Steve Brucken, represented to Carter that purchase of the AUL service contract would provide Carter with warranty coverage for 36 months or 36,000 miles, whichever occurred first.

6. Early in 2005, Mr. Carter's GMC Jimmy developed transmission problems and required a new transmission. After contacting AUL, Mr. Carter discovered that AUL had no record of his service contract or receipt of payment for the contract.

7. Although Mr. Carter paid the Defendant to acquire an AUL service contract on his behalf, the Defendant failed to purchase the contract.

8. To date, the Defendant has neither provided Mr. Carter with a valid AUL Consumer Protection Contract or a refund of the money paid for the purchase of the warranty.

9. On September 2, 2004, Richard W. Bogard purchased a used 2002 Oldsmobile Silhouette from the Defendant for a total price of \$20,696.51. A copy of Bogard's purchase order is attached hereto as Exhibit "B".

10. As part of the total price, Mr. Bogard paid the Defendant \$1,695.00 for an AUL Consumer Protection Service Contract (extended warranty).

11. Defendant through his salesman, Chuck Beaver, represented to Bogard that purchase of the AUL service contract would provide Bogard with warranty coverage for 36 months or 36,000 miles, whichever occurred first.

12. On or around May 18, 2006, Mr. Bogard contacted AUL about filing a claim against the Silhouette's service contract for air conditioning repairs. Mr. Bogard discovered that AUL had no record of his service contract or payment from the Defendant for the contract.

13. On May 22, 2006, Bogard paid \$574.46 to Bryant Auto Center, Inc., for air conditioner repairs that should have been covered by the AUL extended warranty.

14. Although Mr. Bogard paid the Defendant to acquire an AUL service contract on his behalf, the Defendant failed to purchase the contract

15. To date, the Defendant has neither provided Mr. Bogard with a valid AUL Consumer Protection Contract or a refund of the money paid for the purchase of the warranty.

COUNT I - VIOLATIONS OF THE DECEPTIVE CONSUMER SALES ACT

16. Plaintiff realleges and incorporates by reference the allegations contained in paragraphs 1 through 15 above.

17. The transactions referred to in paragraphs 3 and 9, are "consumer transactions" as defined by Ind. Code §24-5-0.5-2(a)(1).

18. The Defendant is a supplier as defined by Ind. Code §24-5-0.5-2(a)(3).

19. The Defendant's representations in paragraphs 4, 5, 10 and 11 that the sale of vehicles included the purchase of an AUL Consumer Protection Service Contract and that the service contracts provided warranty coverage for 36 months or 36,000 miles whichever occurred first, misrepresent the performance, characteristics and benefits of consumer transactions in violation of Ind. Code §24-5-0.5-3(a)(1); misrepresent that consumer transactions involve

warranties or other rights or remedies in violation of Ind. Code §24-5-0.5-3(a)(8); and, misrepresent that Defendant would complete or deliver the subject of a consumer transaction within a stated or reasonable period of time in violation of Ind. Code §24-5-0.5-3(a)(10).

**COUNT II – KNOWING AND INTENTIONAL VIOLATIONS OF
THE DECEPTIVE CONSUMER SALES ACT**

20. Plaintiff realleges and incorporates by reference the allegations contained in paragraphs 1 through 19 above.

21. The Defendant knowingly and intentionally committed the misrepresentations and deceptive acts set forth in paragraphs 4, 5, 10 and 11.

RELIEF

WHEREFORE, the Plaintiff, State of Indiana, requests the Court enter judgment against Defendant Douglas E. Brucken, enjoining him from the following:

- a. representing, expressly or by implication, that consumers can buy extended service contracts for vehicles purchased from the Defendant, when the Defendant knows or should reasonably know he will not provide or purchase the extended service contracts on behalf of customers as represented;
- b. representing, expressly or by implication, that consumers will receive specific warranty coverage from extended service contracts sold to customers, when the Defendant knows or should reasonably know consumers will not receive the represented coverage; and,
- c. representing, expressly or by implication, that Defendant will deliver or provide consumers with extended service contracts within a stated or

reasonable period of time, when the Defendant knows or should reasonably know he will not deliver or provide extended service contracts as represented.

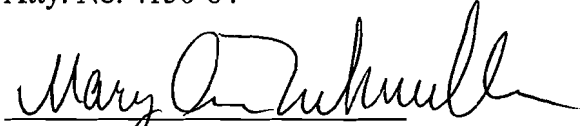
AND WHEREFORE, the Plaintiff, State of Indiana, further requests the Court enter judgment against the Defendant for the following relief:

- c. cancellation of consumer contracts, pursuant to Ind. Code §24-5-0.5-4(d);
- d. consumer restitution pursuant to Ind. Code §24-5-0.5-4(c)(2), for reimbursement of all repair costs, deposits, down payments, and other funds remitted by consumers for the purchase of extended service contracts, including but not limited to, the persons identified in paragraphs 3 and 9;
- e. costs pursuant to Ind. Code §24-5-0.5-4(c)(3), awarding the Office of the Attorney General its reasonable expenses incurred in the investigation and prosecution of this action;
- f. civil penalties pursuant to Ind. Code §24-5-0.5-4(g) for the Defendant's knowing violations of the Deceptive Consumer Sales Act, in the amount of \$500.00 per violation, payable to the State of Indiana;
- g. civil penalties pursuant to Ind. Code §24-5-0.5-8 for the Defendant's intentional violations of the Deceptive Consumer Sales Act, in the amount of \$500.00 per violation, payable to the State of Indiana; and

h. All other just and proper relief.

Respectfully submitted,
STEVE CARTER
Attorney General of Indiana
Atty. No. 4150-64

By:



Mary Ann Wehmuller, 15251-49A
Deputy Attorney General
Office of Attorney General
Indiana Government Center South
302 W. Washington, 5th Floor
Indianapolis, IN 46204
Telephone: (317) 233-3973
Maw:328332

Eric and Doug's
GREAT WHEELS USED CAR PER STORE
 3968 S. US. 41
 TERRE HAUTE, INDIANA 47802
 (812) 234-6677

| PLEASE ENTER MY ORDER FOR THE FOLLOWING | | | | | |
|--|--|---------------------------------------|------------------------------|--------------------------------|-----------------------------|
| <input type="checkbox"/> NEW | <input checked="" type="checkbox"/> USED | <input type="checkbox"/> DEMONSTRATOR | <input type="checkbox"/> CAR | <input type="checkbox"/> TRUCK | |
| YEAR 2001 | MAKE GMC | SERIES JIMMY | TYPE TRUC | | |
| COLOR BURGANDY | UPPER | LOWER | TRIM | FACT. ORDER # | |
| STOCK NO. 3326 | V.I.N. | | | | TO BE DELIVERED ON OR ABOUT |
| PRICE OF VEHICLE → | | | | \$ | 12700.00 |
| ACCESSORIES: | | | | | |
| FREIGHT | | | | | |
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| \$ 12700.00 | TOTAL SALES PRICE | | | \$ | 12700.00 |
| N.A. | Less: Trade-In Allowance | | | | |
| \$ 12700.00 | Trade Difference - Indiana Tax Price | | | | |
| Sales Tax (Computed In Indiana On Tax Price) | | | | \$ | 762.00 |
| Document Fee | | | | \$ | 95.00 |
| SERV CONTRACT | | | | \$ | 1800.00 |
| | | | | \$ | N.A. |
| TOTAL DELIVERED PRICE | | | | \$ | 15157.00 |
| Plus: Balance Owed on Trade-In | | | | \$ | N.A. |
| LESS: TOTAL CREDITS (Transferred From Rt. Column) | | | | \$ | 1000.00 |
| BALANCE DUE ON DELIVERY | | | | \$ | 14157.00 |

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|--|--|----------------|-----------|
| DATE: 09/01/04 | | SALESPERSON | |
| PURCHASER'S NAME CLAUDE W. WINTER | | | |
| STREET ADDRESS | | | |
| CITY | | STATE | |
| RESIDENCE PHONE | | BUSINESS PHONE | |
| USED CAR TRADE-IN AND/OR OTHER CREDITS | | | |
| MAKE OF TRADE-IN | | YEAR | BODY TYPE |
| SERIES | | COLOR | |
| VEHICLE I.D. NUMBER | | | |
| BALANCE OWED (Good Until | |) \$ N.A. | |
| BALANCE OWED TO | | VERIFIED BY | |
| TRADE-IN ALLOWANCE | | \$ N.A. | |
| CASH DEPOSIT WITH ORDER (RECEIPT # | |) 1000.00 | |
| TOTAL CREDITS (Transfer To Left Column) | | \$ 1000.00 | |
| Purchaser is responsible for and shall pay the amount, if any, by which the Balance Owed on the Trade-In exceeds the Trade-In Allowance. | | | |
| WARRANTY INFORMATION | | | |
| NEW OR DEMONSTRATOR: If the Vehicle is a new or demonstrator vehicle, the only written warranty provided with respect to the Vehicle and factory installed accessories is the most recent applicable printed warranty which is made solely by the Manufacturer of the Vehicle. | | | |
| Dealer installed Accessories are not included in the Manufacturer's warranty on the Vehicle and may or may not be included in separate written warranties which are made solely by Manufacturers of the Accessories. | | | |
| USED: IF THIS AGREEMENT IS FOR A USED VEHICLE, THE INFORMATION YOU SEE ON THE (FEDERAL TRADE COMMISSION) WINDOW FORM IS PART OF THIS AGREEMENT. INFORMATION ON THE WINDOW FORM OVERRIDES ANY CONTRARY PROVISIONS IN THE CONTRACT OF SALE. | | | |
| ALL VEHICLES: WHETHER THE VEHICLE IS NEW, A DEMONSTRATOR OR USED: UNLESS DEALER FURNISHES BUYER WITH A SEPARATE WRITTEN WARRANTY OR SERVICE CONTRACT MADE BY THE DEALER ON HIS OWN BEHALF, DEALER DISCLAIMS ALL WARRANTIES, WRITTEN, EXPRESS OR IMPLIED, INCLUDING ALL WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, AND DEALER EXPRESSLY DISCLAIMS ANY LIABILITY TO PURCHASER, FOR ANY CONSEQUENTIAL DAMAGES, LOSS OF TIME OR INCONVENIENCE ARISING OUT OF THE PURCHASE OR OPERATION OF THE VEHICLE. | | | |
| Terms of Payment of Balance Due on Delivery: <input type="checkbox"/> CASH \$ <input type="checkbox"/> CONSUMER CREDIT FINANCING BY OR THROUGH DEALER. | | | |
| THE ADDITIONAL TERMS AND CONDITIONS ON THE REVERSE SIDE OF THIS ORDER ARE INCORPORATED BY REFERENCE AND ARE A PART OF THIS ORDER. | | | |

TRADE-IN CERTIFICATION: THE CUSTOMER CERTIFIES HIS/HER TRADE-IN VEHICLE HAS NEVER BEEN TITLED UNDER A STATE OR FEDERAL "BRAND" SUCH AS "DEFECTIVE", "REBUILT", "SALVAGE", "FLOOD", ETC. _____ (INITIAL)
Purchaser acknowledges that the Additional Terms and Conditions printed on the reverse side of this Order are a part of this Order. Both sides of this Order constitute a single agreement which supersedes any prior agreement or understanding between Dealer and Purchaser. Purchaser acknowledges receipt of a completed and signed copy of this Order. This Order shall not become a binding agreement unless accepted in writing by Dealer or an authorized representative of Dealer.

ACCEPTED
BY:

TITLE

PURCHASER X

PURCHASER X

THIS ORDER IS AN OFFER BY PURCHASER TO BUY THE VEHICLE. IF THE OFFER IS ACCEPTED BY THE DEALER, CONTRACT OF SALE AND THE DEALER HAS NO OBLIGATIONS OR RESPONSIBILITIES NOT EXPRESSLY STATED. BEFORE SIGNING THIS ORDER READ IT CAREFULLY.



3968 S. US. 41
TERRE HAUTE, INDIANA 47802
(812) 234-6677

| PLEASE ENTER MY ORDER FOR THE FOLLOWING | | | | | |
|--|-------------------------------|---------------------------------------|------------------------------|--------------------------------|--|
| <input type="checkbox"/> NEW | <input type="checkbox"/> USED | <input type="checkbox"/> DEMONSTRATOR | <input type="checkbox"/> CAR | <input type="checkbox"/> TRUCK | |
| YEAR | MAKE | SERIES | TYPE | | |
| 2002 | OLDS | SILHOUETTE | VAN | | |
| COLOR | UPPER | TRIM | FACT. ORDER # | | |
| WHITE | LOWER | | | | |
| STOCK NO. | V.I.N. # | TO BE DELIVERED ON OR ABOUT | | | |
| 3265 | [REDACTED] | 02/00 | | | |
| PRICE OF VEHICLE → | | | \$ | 17995.00 | |
| ACCESSORIES: | | | | | |
| FREIGHT | | | | | |
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| \$ | 17995.00 | TOTAL SALES PRICE | \$ | 17995.00 | |
| | 12760.00 | Less: Trade-In Allowance | | | |
| \$ | 5235.00 | Trade Difference - Indiana Tax Price | | | |
| Sales Tax (Computed in Indiana on Tax Price) | | | \$ | 314.10 | |
| Document Fee | | | \$ | 95 00 | |
| SERV CONTRACT | | | \$ | 1695.00 | |
| | | | \$ | N.A. | |
| TOTAL DELIVERED PRICE | | | \$ | 20099.10 | |
| Plus: Balance Owed on Trade-In | | | \$ | 13357.41 | |
| LESS: TOTAL CREDITS (Transferred From Rt. Column) | | | \$ | 12760.00 | |
| BALANCE DUE ON DELIVERY | | | \$ | 20696.51 | |
| TRADE-IN CERTIFICATION: THE CUSTOMER CERTIFIES HIS/HIS STATE OR FEDERAL "BRAND" SUCH AS "DEFECTIVE", "REBUILT Purchaser acknowledges that the Additional Terms and Conditions printed Order constitute a single agreement which supersedes any prior acknowledge receipt of a completed and signed copy of this Order. This Dealer or an authorized representative | | | | | |
| ACCEPTED BY: _____ | | | EXHIBIT B | | |
| THIS ORDER IS AN OFFER BY PURCHASER | | | | | |

| | | | |
|--|----------|-------------------|-----------------|
| DATE | 09/02/04 | SALESPERSON | |
| PURCHASER'S NAME RICHARD ROBERT MONA K BOGARD | | | |
| STREET | | | |
| CITY | | | |
| RESIDENCE | | BUSINESS PHONE | |
| USED CAR TRADE-IN AND/OR OTHER CREDITS | | | |
| MAKE OF TRADE-IN DODGE | | YEAR 2000 | BODY TYPE X4 |
| SERIES DURANGO | | COLOR | |
| VEHICLE I.D. NUMBER | | 1B4H528Z7YF1S0918 | |
| BALANCE OWED (Good Until | | 13357 | |
| BALANCE OWED TO | | VERIFIED BY: | |
| TRADE-IN ALLOWANCE | | \$ 12760 | |
| CASH DEPOSIT WITH ORDER (| | N.A. | |
| TOTAL CREDITS (Transfer To Left Column) | | \$ 12760 | |
| Purchaser is responsible for and shall pay the amount, any, by which the Balance Owed on the Trade-In exceeds the Trade-In Allowance. | | | |
| WARRANTY INFORMATION | | | |
| NEW OR DEMONSTRATOR: If the Vehicle is a new or demonstrator vehicle, the only written warranty provided with respect to the Vehicle and factory installed accessories is the most recent applicable printed warranty which is made solely by the Manufacturer of the Vehicle. | | | |
| Dealer installed Accessories are not included in the Manufacturer's warranty on the Vehicle and may or may not be included in separate written warranties which are made solely by Manufacturers of the Accessories. | | | |
| USED IF THIS AGREEMENT IS FOR A USED VEHICLE. THE INFORMATION YOU SEE ON THE (FEDERAL TRADE COMMISSION) WINDOW FORM IS PART OF THIS AGREEMENT. INFORMATION ON THE WINDOW FORM OVERRIDES ANY CONTRARY PROVISIONS OF THE CONTRACT OF SALE. | | | |
| ALL VEHICLES: WHETHER THE VEHICLE IS NEW, A DEMONSTRATOR OR USED: UNLESS DEALER FURNISHES BUYER WITH A SEPARATE WRITTEN WARRANTY OR SERVICE CONTRACT MADE BY THE DEALER ON HIS OWN BEHALF, DEALER DISCLAIMS ALL WARRANTIES, WRITTEN, EXPRESS OR IMPLIED, INCLUDING ALL WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, AND DEALER EXPRESSLY DISCLAIMS ANY LIABILITY TO PURCHASER, FOR ANY CONSEQUENTIAL DAMAGES, LOSS OF TIME OR INCONVENIENCE ARISING OUT OF THE PURCHASE OR OPERATION OF THE VEHICLE. | | | |
| Terms of Payment of Balance Due on Delivery: <input type="checkbox"/> CASH \$ <input type="checkbox"/> CONSUMER CREDIT FINANCING BY OR THROUGH DEALER. | | | |
| THE ADDITIONAL TERMS AND CONDITIONS ON THE REVERSE SIDE OF THIS ORDER ARE INCORPORATED BY REFERENCE AND ARE A PART OF THIS ORDER. | | | |
| IF TRADE-IN VEHICLE HAS NEVER BEEN TITLED UNDER A "SALVAGE", "FLOOD", ETC. (INITIAL) | | | |
| on the reverse side of this Order are a part of this Order. Both sides of this agreement or understanding between Dealer and Purchaser. Purchaser Order shall not become a binding agreement unless accepted in writing by | | | |
| PURCHASER X | | R.W. Bogard | |
| PURCHASER X | | Mona K Bogard | |
| THE OFFER IS ACCEPTED BY THE DEALER IT BECOMES A COMPLETE | | | |